

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RICHARD B. KELLY,

Plaintiff,

V.

JACOB NULL,

Defendant.

)
)
)
)
)
)
)
)
)

Civil No. **08-322-GPM**

ORDER

PROUD, Magistrate Judge:

Before the Court is plaintiff's motion to compel the defendants to produce certain documents for inspection and copying— a list of the inmates on B-2 wing on the date of the incident at issue (and their prisoner numbers). (**Doc. 115**). Plaintiff attaches a copy of defendant Powers' objection to that discovery request. Defendant Dr. Powers asserts that he does not have that information in his possession, and he otherwise objects that release of that information could pose a security risk and/or violate physician-patient privilege.

The Court cannot compel Dr. Powers to produce what is not in his custody of control. ***See Fed.R.Civ.P. 34(a)***. Although Dr. Powers is Medical Director at Tamms Correctional Center, he is sued in his individual capacity. Such a request is better directed to administrative officials at Tamms Correctional Center, or the Illinois Department of Corrections. Because Dr. Powers is sued in his individual capacity, the Court does not perceive that he has standing to assert the security concerns of the institution or IDOC.

IT IS THEREFORE ORDERED that the subject motion (**Doc. 115**) is **DENIED**.

IT IS SO ORDERED.

DATED: August 6, 2009

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE